

## Central Law Journal.

ST. LOUIS, MO., NOVEMBER 8, 1907.

### SOME OBSERVATIONS IN REGARD TO OUR JUVENILE COURTS AND JUDGES.

The importance of the juvenile court work can not be overestimated. There has been considerable progress in the understanding of the nature of the jurisdiction and the proper apprehension and comprehension of the manner of its exercise. Unfortunately the deeper understanding of the scope of the equitable powers and the possibilities of equity were not grasped by the leaders of the movement.

The best opinions in respect to the power of equity in the matter of the juvenile courts in Illinois, were rendered by the circuit judges of Cook County. But the Supreme Court of Illinois lacked the appreciation of equity jurisprudence that the Cook County judges had, because of the distinctive separation of courts of equity in that county, and that court failed to grasp such opinions as that of Judge McEwen, in the case of *People v. Ivis*. See 61 Cent. Law J. 289. In the West the juvenile court idea gained prominence through the methods of dealing with the juvenile delinquents by Judge Lindsay, which commended him to the people of the land, because of the success he reached in gaining the confidence of the delinquents. Judge Lindsay is entitled to great credit for the methods he developed and which have been followed by all those who have been most successful in the handling of the delinquents in a juvenile court. Had Judge Lindsay developed as great juridical ability as he did ability to reach the hearts of boys, we would have beheld a development of an equity jurisprudence commensurate with the success attending his other work. However, Judge Lindsay has proven himself a probation officer of a high order and this is the real element which enters into the determination of the best interests of the delinquent.

The boy's real judge is the one who understands him and his needs. The farther away from the delinquent, the idea that he is dis-

graced as by a criminal process, can be removed, the nearer a boy is brought to the truly equitable consideration which ought to be applied in curing him of his delinquency. Equity properly applied does not regard him as a criminal and it is because the common law process of treating him as a criminal and punishing him as such, is not the adequate remedy to be applied in order to do the boy justice, that equity steps in with a better remedy and treats him only as a person who has not had a proper opportunity to make a good citizen of himself, and offers to educate him, assuming that it is not the boy but his environment which is responsible for the delinquency which brought him into its jurisdiction. It says "hold up your head my boy; look the world in the face; you are not regarded here as a criminal, you can make a man of yourself; we have schools in which to educate you." The court becomes the parent and exercises the control of a parent in the education of the boy. If it restrains him of his liberty it does so as a parent. So with this understanding of the law a juvenile court judge needs as his greatest qualification the ability to understand how to deal with boys, which is preferable in the alternative to a deep and comprehensive knowledge of jurisprudence without such knowledge of children.

A thorough understanding of the nature of equity, however, would have been a good thing for our first juvenile court judges, for then they would not have understood that they were exercising a criminal jurisdiction, but an equitable jurisdiction, provided in the fundamental law of the state. The very nature of a juvenile court brings it under the equity branch of the due process of law provisions of the constitution. We fully disclosed this in our article with regard to the juvenile court of Utah as a branch of equity. 61 Cent. L. J. 101.

Judge Williams of the Juvenile Court of St. Louis, seems to be exercising the equity powers of that court with a degree of breadth and comprehension far in advance of any other judges now in the west, and seems to see that as a judge, in the very nature of the jurisdiction, he may provide for delinquents in such a way as, in his judgment, will best promote the delinquent's welfare, and that it is not necessary to have the legislature specify every move he may make in.

order to have the power to act so as to conserve the best interests of a delinquent? So many judges seem to forget that a jurisdiction carries with it the necessary powers to make it effective. Had Judge Lindsay of Colorado fully comprehended this, he could have been of far greater value as the "father of the juvenile court," as he is often styled. However he would probably have been hampered by the supreme court just as the Cook county (Ills.) judges were by the supreme court of their state. A recent opinion of the Supreme Court of Alabama, also, fails to grasp the nature of a juvenile court or the nature of its jurisdiction, and thus the progress of these courts is hampered by a lack of a broad-minded comprehension of such a jurisdiction as a branch of equity, all which is greatly to be deplored.

Judge Williams of St. Louis, together with the judges of Boston and other eastern cities, seem to have truly understood the nature and scope of the jurisdiction they are exercising. In Utah, Judge Brown was deposed on the ground of his lack of legal education and yet Judge Brown, was the first to give a correct interpretation of the jurisdiction he was exercising as a juvenile judge, and was the first to have a separate court, and it was almost wholly through his efforts that a separate court was secured. By his conduct of the juvenile court, Judge Brown showed a far better comprehension of his business than the supreme judge who wrote the opinion which severely arraigned him, which opinion, we paid our respects to when it appeared.

It is too bad that narrow-minded and incapable supreme judges have had so much to do with the interpretation of juvenile court powers. Judge Brown, though not a lawyer, understood far better than the Supreme Court of Utah the nature and scope of his jurisdiction, although, that court did a good thing in holding the law for a separate court constitutional. But its opinion shows a shameful lack of understanding of the juridical means by which to reach that conclusion. Although Judge Brown is no longer judge of the Salt Lake City Juvenile Court he did a splendid work in getting it off in the right direction. He has had a remarkable influence for good over the delinquents and left unimpeachable proof of this fact as well as the fact that he had the right understanding of the scope of

the jurisdiction intended in the very nature of the equitable powers conferred. The juvenile courts in Boston and St. Louis, the Supreme Court of Pennsylvania and of the District of Columbia, the Circuit Judges of Cook County, Illinois, all give credit to his understanding. We predict that he will be sadly missed from the Utah court.

#### NOTES OF IMPORTANT DECISIONS.

**BANKRUPTCY—DEBTS CREATED BY FRAUDULENT REPRESENTATION.**—One of the most important and interesting questions which arise under the bankruptcy act is to determine what are such fraudulent representations which will prevent a claim from falling within the bar of a discharge in bankruptcy. In the recent case of *Rowell v. Ricker*, 66 Atl. Rep. 569, the Supreme Court of Vermont had occasion to consider this question, holding that a person who obtained a flock of sheep on a fraudulent representation to the seller that he was to receive that day a check for more than the price of the sheep, and would give it to the seller, and converted the sheep to his own use without paying for them, was not discharged from the debt by his discharge in bankruptcy.

The court after showing that "fraud is infinite," in the words of Lord Hardwicke, argues as follows: "The United States Bankruptcy Act, 1898, seems sufficiently explicit in defining the kind of fraud that will prevent a debtor from obtaining a discharge. It says: 'A discharge in bankruptcy shall release a bankrupt from all his provable debts except such as \* \* \* are liabilities for obtaining property by false pretenses or false representations.' But plain as this language is the supreme court has had occasion to construe it. In *Neal v. Clark*, 95 U. S. 704, 24 Law Ed. 586, the court said it meant positive fraud, or fraud in fact, involving moral turpitude or intentional wrong, and not implied fraud, or fraud in law, which may exist without the imputation of bad faith or immorality. The rule is restated in *Ames v. Moir*, 138 U. S. 306, 11 Sup. Ct. Rep. 311, 34 L. Ed. 951. In *Farsyth v. Vehmeyer*, 177 U. S. 177, 20 Sup. Ct. Rep. 623, 44 L. Ed. 723, the court held that 'a representation as to a fact, made knowingly, falsely, and fraudulently, for the purpose of obtaining money from another, and by means of which such money is obtained, creates a debt by means of a fraud involving moral turpitude and the intentional wrong.' The facts alleged bring the present case clearly within these rules. As the court said in the case last cited, 'it is so plainly a fraud of that description that its mere statement obtains our ready assent.'

LEVY OF ATTACHMENT UPON  
ROLLING STOCK OF A RAILROAD  
COMPANY DOING INTERSTATE  
BUSINESS—IS IT A REGULATION  
OF, OR AN INFRINGEMENT UPON  
THE FREEDOM OF, INTERSTATE  
COMMERCE?

Nearly all, if not all, of the states of the Union have a provision in their law providing for suit against foreign corporations by attachment of property of such corporations when found within the jurisdiction of the court; in other words the several states provide for proceedings *in rem* against foreign corporations, the same as against non-residents. So universal is this law, and so uniformly is it followed in practice, that the ordinary practitioner seldom gives the matter much thought. There is one branch of this procedure, however, to the writer's mind, that is in a decidedly unsettled state, and that is the matter of attaching the rolling stock of a corporation engaged in interstate commerce.

There have been many decisions by courts of last resort upon the power generally, to subject rolling stock to attachment and execution. In the early case of *M. & M. R. Co. v. James*,<sup>1</sup> this question was raised, when rolling stock, along with the roadbed, of that company was taken under judgment execution. It was contended by the railroad company that neither the land nor works essential to the enjoyment of its franchise could be sold because it would destroy, or, at least, impair, the value of the franchise. Mr. Justice Nelson, in delivering the opinion of the court, after pointing out that the rolling stock of the company was a fixture by statute, as well as by its charter, said:

"A sale under a decree of chancery, and a conveyance in pursuance thereof, confirmed by the court, passed the whole of the interest of the company existing at the time of its rendition to the purchaser."

In the case of *Arthur v. Commercial & R. Bank of Vicksburg*,<sup>2</sup> the court uses this language:

"The tangible property and estate of a corporation are no more exempt from execution than those of an individual."

<sup>1</sup> 6 Wall. 750.

<sup>2</sup> 9 Smedes & Marshall (Miss.), 394, 48 Am. Dec. 719.

This same doctrine has received support in Iowa,<sup>3</sup> New Hampshire,<sup>4</sup> New Jersey,<sup>5</sup> New York,<sup>6</sup> Ohio,<sup>7</sup> and Wisconsin.<sup>8</sup> Of these instances, perhaps the strongest is that of New Jersey<sup>9</sup> where the court says:

"And in practice the engines and cars of railroad companies have been seized under execution and distrained for taxes, as personal property, without any scruple as to their liability to seizure and sale as such."

In the case of *Buffalo Coal Co. v. Rochester & S. L. R. Co.*,<sup>10</sup> the court in passing directly upon the question as to the attachment of cars belonging to a foreign corporation, says:

"The cars belonging to a railroad company and operating in a foreign state are liable to seizure under attachment if found within the commonwealth."

In this case seems to be embodied the very idea that was intended by the enactment of the statute referred to.

Taking these, and other cases that might be cited, as a basis, text-book writers pretty generally hold that cars, engines—all rolling stock—of a railroad company may be levied upon either by attachment or execution.<sup>11</sup> Of these writers, however, three, while adhering to the general principle, make an exception in the case where the rolling stock is in actual use at the time of the levy.<sup>12</sup> And this brings us to the next point of consideration.

In the early case of *Michigan C. R. Co. v. Chicago & M. L. S. R. Co.*,<sup>13</sup> where the question of attachment of cars of a foreign railroad company was squarely presented, the

<sup>3</sup> *Dubuque v. Illinois C. R. Co.*, 39 Iowa, 56.

<sup>4</sup> *Boston C. & M. R. Co. v. Gilmore*, 37 N. H. 410; 72 Am. Dec. 336.

<sup>5</sup> *Williamson v. N. J. So. R. Co.*, 29 N. J. Eq. 327.

<sup>6</sup> *Randall v. Elwell*, 52 N. Y. 521, 11 Am. Rep. 747; *Hoyle v. Plattsburg & M. R. Co.*, 54 N. Y. 314, 13 Am. Rep. 595; *Stevens v. Buffalo & N. Y. City R. Co.*, 31 Barb. 590; *Beardsley v. Ontario Bank*, 31 Barb. 619; *Bennett v. P. & M. R. Co.*, 47 Barb. 104.

<sup>7</sup> *Coe v. C. P. & I. R. Co.*, 10 Ohio St. 372, 75 Am. Dec. 518; *Coe v. Peacock*, 14 Ohio St. 187.

<sup>8</sup> *C. & N. W. R. Co. v. Ft. Howard*, 21 Wis. 45, 91 Am. Dec. 458.

<sup>9</sup> *Supra*.

<sup>10</sup> 8 Wkly. Notes Cas. 126 (Pa.)

<sup>11</sup> *Freeman, Executions* (2nd. Ed.), Vol. 1, sec. 179; *Kneeland, Attachments*, 237; *Drake, Attachment* (6th Ed.), sec. 252a; *Rorer, Interstate Law*; 281; *Elliott, 2 Railroads*, 887.

<sup>12</sup> *Kneeland, Drake, Elliott, supra*.

<sup>13</sup> 1 Ill. App. 399 (1878).

court in holding that such attachment was contrary to public policy, said:

"If the statute should be allowed the operation sought to be given it in the present case, it would beyond doubt, very seriously interfere with the transportation of freights by railroad, according to the methods which experience seems to have developed as the speediest, most economical and best. Our railroads extend into all parts of the country, and traverse all of the various states of the Union, forming one great and complicated system of internal communication, so that for most of the practical purposes of transportation, each railroad, instead of constituting a separate line, is only a part or member of this general system. Cars may be loaded at any point upon one railroad and transported, without unloading, to the point of destination on any other railroad, however distant. It cannot be doubted that this method of conducting the carrying business of the country greatly subserves the public convenience, and should not be interfered with for the mere prosecution of individual and private ends, except for very strong and controlling reasons.

"If a car, as soon as it passes from the line of road of its owner on to the line of another company becomes subject to process of garnishment, no railroad company owing debts can safely allow its cars to pass beyond its own line for any purpose; nor can any company, without exposing itself to the annoyance of continual litigation between other parties and in which it has no interest, receive the loaded cars of other companies for transportation to their place of destination. The doctrine contended for—would make each railroad company an agency for the collection of the debts and liabilities of every other railroad company with whose track its line of road is immediately or remotely connected. The railroad companies would be compelled either to abandon the present economical and expeditious system of transportation, or carry it on at the risk of being continually drawn into the controversies between third parties, and of being exposed to expensive and vexatious litigations in which they have no interest."

While in the above case, the court holds against the attachment of cars of a foreign road by garnishee process, it does so wholly

upon the theory that such a practice is against public policy.

The next case of interest upon this question arose in West Virginia. In *Wall v. Norfolk & Western Railway Company*,<sup>14</sup> the facts were substantially as follows: Some cattle belonging to the plaintiff were injured while being carried over the line of the Pennsylvania Railroad Company in the State of Pennsylvania. Suit was brought against the Pennsylvania Railroad Company in West Virginia, and a car belonging to that company, but at that time in the possession of the Norfolk & Western Railway Company, attached while in the latter state, the last named road being made a garnishee defendant. The car at the time of attachment was loaded with plaster, consigned from a place outside of the state to a place within its borders, but which had not yet been reached. In a very elaborate and lengthy opinion, the court holds that such a procedure is an interference with interstate commerce.

In the course of its opinion, the West Virginia court says:

"There is another reason still, of very controlling force, exempting the garnishee from liability, and that is that clause of the Federal Constitution giving power to regulate commerce between the states, and the act of Congress providing 'that every railroad company in the United States whose road is operated by steam, its successors and assigns, is hereby authorized to carry upon and over its road—passengers—freight and property on their way from any state to another state—and to connect with roads of other states, so as to form continuous lines for the transportation of the same to the place of destination.' It has been frequently held that the powers of the federal government under said clause of the constitution are exclusive of all power in the state. Any statute or action by state authorities which amounts to a regulation of commerce between the states is void; and if it works obstruction or even a retardation of such commerce, it is, in law, a regulation of interstate commerce."

The learned judge continues:

"I cannot imagine anything more directly operative on interstate commerce than an attachment so used. It will not do to say that

<sup>14</sup> 52 W. Va. 485, 64 L. R. A. 501.

we can find no act of congress saying that state process shall not be served upon railroad cars running from state to state, and that, until there is such act, state process can be so served. Powers of the national government were given to it in this commerce matter by the states at the foundation of the government, in order that the indispensable transaction of interstate commerce should be under one single governmental power, for the sake of uniformity, so that it would not be hampered and crippled by the action—the different and diverse and variant action—of many states, which would forbid the growth of commerce and prosperity of all states; and this power in the nation is exclusive. It is well established that so long as congress does not pass any law to regulate commerce among the several states, it thereby indicates its will that that commerce shall be free and untrammelled.

"It may be that this ruling will render the application in practice of the provision of the state constitution making liable the rolling stock of foreign corporations, or even of railroad companies created by the state, very narrow; but if so, it is the result of the force—the paramount force—of the federal constitution."

In this case the court indicates beyond a reasonable doubt that an attachment or levy upon a loaded car belonging to a foreign company, and possibly one belonging to a local company doing interstate business, would be an interference with interstate commerce, and consequently a nullity. But the next case we notice goes one step farther.

In *Connery v. Quincy, O. & K. C. R. Co.*,<sup>15</sup> the Supreme Court of Minnesota holds that a car of a foreign railroad company brought into the state, after being unloaded of its freight and standing empty, is not subject to an attachment or garnishment. The court in concluding its opinion says:

"Had the car seized in this case been delayed longer than necessary in the course of business to return it to the place from whence it came, or had it been diverted within the state to uses and purposes exceptional to its presence here under the demands of interstate commerce with the consent of the owning corporation, a different proposition would

be presented; but practically it was engaged in a transit into and from the state upon such reasonable conditions as ought not to impose upon it such property conditions and characteristics as should subject it to seizure in coming into and returning from the state for the purpose of giving jurisdiction to litigants here who otherwise would be compelled to contest their causes of action in the tribunals where the property had its undoubted legal situs."

The question that arises in the mind of the writer is, how far will the courts go toward the protection of rolling stock of a railroad company engaged in interstate commerce? In other words, do not the decisions last discussed go so far as to pave the way for a total exemption of rolling stock of a railroad company doing interstate business, whether the rolling stock be in a foreign state or in the state where the corporation is domiciled? The general rule heretofore has been "that the legislation of a state, not directed against commerce or any of its regulations, but relating to the rights, duties, and liabilities of citizens, and only indirectly and remotely affecting the operation of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit. A state statute which only assumes to regulate those engaged in interstate commerce while passing through the particular state is nevertheless void because it in effect and necessarily regulates and controls the conduct of such persons throughout the entire voyage which stretches through several states."<sup>16</sup>

Is a state law providing generally for the attachment of property of a non-resident in order to acquire jurisdiction to the extent of the *rem*, such a direct regulation of interstate commerce as to render an attachment void, or does such a provision come under that class of legislation that affects interstate commerce in an indirect manner? And if it be held that an attachment of a car, not loaded or actually in transit, in a foreign state, is an infringement upon the freedom of interstate commerce, is it not the next logical step, as intimated by the West Virginia court, to hold that the rolling stock of a company doing an

<sup>15</sup> 99 N. W. Rep. 395 (Minn).

<sup>16</sup> 17 Am. & Eng. Ency. of Law (2nd. Ed.), 75.

interstate business cannot be attached in the state where it is domiciled because it would prevent freedom in interstate commerce?

It would seem that the case of *Lathrop v. Middleton*,<sup>17</sup> indicates what attitude the courts should take upon this question. In that case the question of interference with the mails was raised. A ferry boat held the contract for carrying mail between certain points. The boat was seized while not actually engaged in carrying the mail, and the court held such a seizure valid. In passing upon the question, it was "held, further, that this act (relative to obstructing passage of the mails) must be strictly construed when under its provisions it is sought to protect property used in the transportation of the mails from the pursuit of creditors."

Surely, the national government is as jealous of its mail as it is of its interstate commerce, and yet the doctrine announced in this California case seems never to have been overruled.

But if courts generally take the trend as outlined in the West Virginia case, and if the United States Supreme Court follows its general rule of adopting "the construction of the statute put upon it by the state court of last resort,"<sup>18</sup> what will be the final outcome?

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<sup>17</sup> 23 Calif. 257, 83 Am. Dec. 112.

<sup>18</sup> 17 Am. & Eng. Ency. of Law, 76.

#### ADVERSE POSSESSION—SCHOOL LANDS.

MURTAUGH v. CHICAGO, M. & ST. P. RY. CO.

*Supreme Court of Minnesota, July 19, 1907.*

Title to lands granted to the state of Minnesota for the use of its schools by the United States cannot be acquired by adverse possession, as against the state.

START, C. J.: This is an action of ejectment brought October 12, 1906, in the district court of the county of Dakota to recover from the defendant the possession of a strip of land 100 feet wide running through lot 6, section 36, township 115, range 17, in the county of Dakota, which the plaintiff claims to own in fee. The defendant claimed title to the land by adverse possession and at the close of the evidence the trial court directed a verdict for it. The plaintiff appealed from an order denying his motion for a new trial.

The facts are undisputed. Lot 6, which includes the land in question, was a part of the grant of lands to the state of Minnesota for the use of its schools. The state never conveyed or parted with its title in fee thereto until May 31, 1904, when it executed and delivered its patent therefor to the plaintiff. This patent conveyed the entire lot in fee to the plaintiff, if the defendant had not then gained title to the strip, which is the subject-matter of this action, by adverse possession. The defendant entered into possession of the strip of land under color of title 25 years prior to the commencement of this action, and ever since has been in the exclusive possession thereof, using it as a part of its right of way.

The sole question which the facts stated raise is whether, in view of the character of the title of the state to its school lands, title thereto can be acquired by adverse possession. This is necessarily so; for, if the state had not lost its title to the strip of land by the defendant's adverse possession, the plaintiff is the owner thereof. The defendant concedes the correctness of the general rule that the statutes of limitations do not operate against the state or general government, unless there be an express provision or necessary implication to that effect, and that title to public land cannot be acquired by adverse possession. *Maas v. Burdetzke*, 93 Minn. 295, 101 N. W. Rep. 182, 106 Am. St. Rep. 436.

It is, however, the contention of the defendant that the statute of this state (Rev. Laws, 1905, § 4072) expressly or by necessary implication provides that the title to the school lands of the state may be acquired by adverse possession. The original of section 4072 was section 12, ch. 66, Gen. St. 1866 (Gen. St. 1894, § 5142), which provided that "the limitations prescribed in this chapter for the commencement of actions shall apply to the same actions when brought in the name of the state, or in the name of any officer, or otherwise, for the benefit of the state, in the same manner as to actions brought by citizens." This court, in the case of *City of St. Paul v. Railway Co.*, 45 Minn. 387, 48 N. W. Rep. 17, held that the provisions of this section of the statute of limitations applied to actions brought by the state, whether brought in its sovereign capacity to enforce rights as to property held by it in trust for the public, or in its proprietary capacity. The question under consideration in that case related to the claim of the city of St. Paul to recover a public levee. In practice this rule, which seems to be against the weight of judicial authority (see *Northern Pacific v. Ely*, 25 Wash. 384, 65 Pac. Rep. 555, 87 Am. St. Rep. 775), was cautiously applied, and it was held that the statute did not begin to run as to public streets, ways, levees, and grounds until they were required for actual public use. *Parker v. City of St. Paul*, 47 Minn. 317, 50 N. W. Rep. 247; *St. Paul & Duluth Ry. Co. v. Village of Hinckley*, 53 Minn. 398, 55 N. W. Rep. 560; *Bice v. Town of Walcott*, 64

Minn. 459, 67 N. W. Rep. 360. The legislature, however, by chapter 65, p. 65, Laws 1899, abrogated the rule. See *City of Hastings v. Gillitt*, 85 Minn. 331, 88 N. W. Rep. 987. The statute now reads as follows: "Such limitation shall apply to actions by or in behalf of the state and the several political divisions thereof: Provided, that no occupant of a public way, levee, square, or other ground dedicated or appropriated to public use shall acquire, by reason of his occupancy, any title thereto." Rev. Laws 1905, § 4072.

The statute, making statutes of limitations applicable to the state, to which reference has been made, must be construed with reference to the school land grant and the provisions of the state constitution accepting the grant and providing for the sale of the land. Section 18 of an act of congress entitled "An act to establish the territorial government of Minnesota," passed March 3, 1849, (9 Stat. 408, ch. 121), known as the "Organic Act of Minnesota," reserved sections 16 and 36 of every township for the purpose of being applied to schools of the territory and future state. This was supplemented by section 5 of the act of congress passed February 26, 1857 (11 Stat. 167, ch. 60), authorizing the people of Minnesota to form a state government. This section granted to the state sections 16 and 36 of the public lands in every township within the state for the use of schools, provided the grant should be accepted by the constitutional convention, and, if it were, then its terms should become obligatory on the United States and the state of Minnesota. The convention, and the people of the state by their approval and ratification of the constitution, accepted the grant of sections 16 and 36 for the use of the schools of the state, and safeguarded the trust by providing that the proceeds of such trust lands should remain a perpetual school fund, and that no portion of the lands should ever be sold otherwise than at public sale. Const. Minn. art. 2, § 3, and art. 8, § 2. Our school land grant, then, was not made to the state in its proprietary capacity, but in trust, for the explicit purpose of having the lands applied to the use of the schools of the state. This was the substantial consideration for the grant which induced the United States to make it. The state accepted the trust, and by its constitution solemnly covenanted with the United States to apply the granted lands to the sole use of its schools according to the purposes of the grant, and prohibited the sale of any portion of the granted land except at public sale. Such being the nature of the title of the state to its school lands, it is unthinkable that the legislature intended, by section 12, ch. 66, Gen. St. 1866, and later acts amending it, to provide a way whereby the trust as to any of the school lands might be defeated, and title thereto acquired by adverse possession, contrary to the mandate of the constitution that title thereto could only be obtained by a public sale thereof.

The decision in the case of *Northern Pacific Railway Co. v. Townsend*, 190 U. S. 267, 23 Sup.

Ct. Rep. 671, 47 L. Ed. 1044, is an interesting and authoritative one. In that case the railway company brought ejectment to recover from the defendant a portion of its right of way, to which the defendant claimed title by adverse possession under the statute of limitations of the state. 84 Minn. 152, 86 N. W. Rep. 1007, 87 Am. St. Rep. 342. The Supreme Court of the United States held that, although the plaintiff's right of way, granted to it by the United States, was amenable to the police power of the state, yet an individual could not acquire title to any portion thereof by adverse possession under the statute of limitations of the state. In its opinion the court, after stating that the grant of the right of way was for a specific purpose, said: "This being the nature of the title to the land granted for the special purpose named, it is evident that to give such efficacy to a statute of limitations of a state as would operate to confer a permanent right of possession to any portion thereof upon an individual for his private use would be to allow that to be done by indirection which could not be done directly."

We are, then, of the opinion that, if the statute under consideration must be construed as authorizing the acquisition of title to school lands of the state by adverse possession, it violates in this respect, not only the terms of the grant, but also the constitution of the state. We are, however, of the opinion that the statute fairly may be given a construction which is consistent with the terms of the school land grant and the provisions of the state constitution applicable thereto. If the statute be read in connection with the general and well-understood rule of law that title to public land cannot be acquired by adverse possession, the history of our school land grant, the nature of the title of the state to its school lands, and the mandates of our constitution with reference to them, it is clear upon the face of the statute that the legislature did not intend to provide for the acquisition of the title to school lands by adverse possession. We accordingly hold that title to lands granted to the state of Minnesota for the use of its schools by the United States cannot be acquired by adverse possession, as against the state.

Order reversed, and a new trial granted.

*NOTE—Adverse Possession as Against the State, with the Legislature's Permission.*—It needs no citation of authority to announce as a well established rule that title to land cannot, in the absence of a statute specifically abating the rule, be acquired by adverse possession against the state or its interests. Thus, as to the United States government, there is no way for titles to lands to be divested out of the United States except in strict pursuance of some law of the United States; and as no statute of limitations runs against the United States, occupancy and possession alone, even for a great length of time, cannot ripen into title as against the United States. *Drew v. Valentine*, 18 Fed. Rep. 712; *Oaksmith v. Johnston*, 92 U. S. 343.

But can the state permit its title to public lands to be ousted by private individuals under and by virtue of any statute of limitations? This is the interest-

ing question suggested in the principal case and raises for our thought and study a number of interesting and important considerations. In the splendidly reasoned case of *Ralston v. Town of Weston*, 46 W. Va. 544, 76 Am. St. Rep. 834, 33 S. E. Rep. 326, speaking of lands devoted to a public use, the court said: "The state in its governmental capacity has no right to alien or authorize the alienation of public highways except for the public good." From this statement the court proceeds to argue that the state not having the right directly to alien lands devoted to a public use cannot do so indirectly by permitting them to be taken by adverse possession.

We do not propose to go into the "niceties" of the discussed distinction between the acquisition of title by adverse possession and title acquired by equitable estoppel as suggested by Judge John F. Dillon in the second volume of his great work on *Municipal Corporations*, section 675, but are inclined to believe the distinction to rest rather on grounds of expediency and apparent justice than of reason or principle. The argument of the court in *Ralston v. Town of Weston*, *supra*, is here again very suggestive: "How can equitable estoppel, any more than the statute of limitations, deprive a sovereign of his rights and permit his subjects to destroy them by their wrongful conduct? The use of their highways is a sovereign right, common to all the people, and of which they cannot be divested except in accordance with their will and appointment for the public weal."

In the case of *Webb v. Demopolis*, 95 Ala. 116, 21 L. R. A. 62, the court held that a city or town has no alienable interest in the public streets thereof, but holds them in trust for its citizens and the public generally; and neither its acquiescence in an obstruction or private use of a street by a citizen, or laches in resorting to legal remedies to remove it, nor the statute of limitations, nor the doctrine of equitable estoppel, nor prescription, can defeat the right of the city to maintain a suit in equity to remove the obstruction.

The writer's opinion on this question on which the authorities have not been numerous may be novel, and in view of the usual practice in so many states may seem imprudent. We have, however, considered this question from every angle, keeping in view always the great maxim, "*Nullum tempus occurrit regi*," as a fixed star or datum post, from which if we should stray too far we would be lost in a labyrinth of error. We have failed to discover any ground on which the legislature may alienate the public domain to private individuals for private purposes and without consideration. If there is no such power in the legislature, how can they be permitted to do indirectly what they cannot do directly? Why should a legislature which is not permitted to give away the public land, be permitted to legislate a voluntary conveyance to the trespasser on public lands who has eluded the vigilance of the officers of the state having custody of the state's lands for a certain length of time and thus interpose a kind of "squatter sovereignty" in the place of the sovereignty of the people, and put a premium on official negligence and individual greed.

The legislature is not the sovereignty of the state; nor does the title to public lands reside in them to do with as they please. In the people in their collective and sovereign capacity rests the title to all public lands and easements and no legislative body, municipal or state, has any right to alienate that property except in the manner specified by the people by constitutional provisions or by direct

vote. The public lands are intrusted to public agents who are to administer the property in the interest of the people and in the manner and to the extent to which they may be empowered; but to say that the trustee thus constituted, may, without the consent of the *cestui que trust*, the people, dispose of such land without consideration by permitting it to be lost through the trustee's own negligence, is against every maxim and principle of law especially such which put the interest of the state supreme above every other conflicting interest. If we once admit that the legislature may alienate public lands without consideration by this indirect method and without any express or implied authority from the people, we open the door for other serious incroachments upon the rights of the people in the public domain. It is true that the legislature is empowered to represent the sovereignty of the people in making the laws, but there are some implied limitations upon this power other than those mentioned in the constitution. These limitations are represented in the great maxims. Thus "*Cujus est institueri ejus est abrogare*" (Whose it is to institute, his it is to abrogate) expresses the universal idea of the absolute supremacy of the source of power. Where the people have by constitution or direct agreement with the federal government, or otherwise, set aside certain lands for certain purposes, it is not within the power of the legislature to in any manner abrogate such agreement or dedication, but it is to the people we must go directly if we desire any material change.

While our position in this annotation is to some degree without direct precedent, we are nevertheless impressed with the fact that it is thoroughly tenable. Of course where the people direct the sale of public lands the legislature has impliedly the power to make all the necessary regulations and conditions upon which such sales shall be promoted, but even here we are not inclined to admit that the legislature could even under such circumstances, dispose of the public domain without consideration, and without further and more definite authority from the people either directly or indirectly by abrogating the effect of the universal maxim *nullum tempus occurrit reipublicae*. Of course, the power of disposition and control over public lands lodged in the legislative power gives them a wide discretion as to the consideration to be accepted in return for dispositions of the public domain, but we apprehend that no disposition would be tolerated except that which was for a public purpose or for some other valuable consideration.

Any thoughtful student of the law must confess that the courts are in a state of hopeless confusion on nearly every phase of the law relating to the subject of adverse possession as against the state or its subdivisions. About the only point of agreement is around the rule that as to the state itself, or the United States, in the absence of any statute, the maxim, *nullum tempus occurrit reipublicae*, prevents the acquisition of any of the public domain by adverse possession whether dedicated to a public use or lying idle subject to sale and disposition. Here, standing firm on the great maxim, the courts are sure of their ground. Leaving this common ground, however, the courts begin to diverge in their meanderings and it becomes difficult to state with certainty the rule on any other phase of this important question. Thus while the general rule is laid down that after the public domain has been granted to an individual the statute begins to run from the time the title passes, the courts are disagreed as to whether to permit the statute to run from

the time when the patent is actually issued, or from the time it is entitled to issue. This confusion is the same in construing grants from the state government as well as grants from the federal government. Then when we come to the application of the rule to subdivisions of the state we are again in confusion. Does the statute run against a county which holds school lands for school purposes? Texas says, no; Missouri and Ohio say yes. Then we come to the question whether the statute runs as against a municipality and we find the wildest sort of chaotic opinion, a large number of courts on grounds and reasons which leave wholly out of consideration the sovereignty of the people, permitting the title of the people not only to unoccupied public domain, but to such that has been dedicated to public uses to be divested by the negligence of its servants to whose care the public domain and easements have been committed. Here the great maxim and fixed star of antiquity "*nullum tempus*," etc., is totally eclipsed. The great, imperial, overriding, supreme authority of the people is trodden under foot, and its title to the public domain squandered and dissipated by the servants to whose care it is committed. It is gratifying, however, that such an increasing number of courts have seen the gross and ridiculous error in these decisions, and holding fast to the great maxim we have referred to, have avoided some of the shoals of error which endanger the present judicial discussion of this great subject. We are therefore glad to observe the one ray of light, feeble and uncertain though it may be, which comes to us from the author of the article on Adverse Possession in the Cyc., 1 Cyc. 1118: "The preponderance of authority, and perhaps of reason, support the view that the maxim, *nullum tempus occurrit regi* applies not only to the sovereign power of the state, but also to municipal and quasi municipal corporations as trustees of the rights of the public, and that title to lands held by a public corporation for public use cannot be acquired by adverse possession."

Observing the serious error into which so many courts have wandered on other phases of the question of the acquisition of title to the public domain by adverse possession, may it not be possible that the few courts who have had occasion to consider the validity of statutes permitting the statute of limitations to run against the state may have been in error, especially since two of them are among the courts who are in error on the other phases of this question. It might be fair to observe, however, that in none of the cases, in which the courts have had occasion to construe statutes nullifying the operation of the maxim *nullum tempus*, etc., has the point been raised questioning the power of the legislature in this regard, and in the future the suggestion contained in the principal case and in this annotation may at least "stir up their pure minds by way of remembrance" and perhaps cause a retracement of steps to old landmarks and sound principles.

A. H. ROBBINS.

#### JETSAM AND FLOTSAM.

##### HANGING HABITUAL CRIMINALS.

Attorney General Bonaparte has rather startled the country by giving utterance to the opinion that habitual criminals should be executed. It has been so long since a death penalty was inflicted in this country for

any other crime than murder, and in a few states for arson or rape, that it has been difficult for the public to take Mr. Bonaparte seriously. The incident, however, has called forth many expressions of opinion as to the necessity of dealing with habitual criminals in such a way as to put an end to their depredations on society, and the heavy expenses to which the state and federal governments are subject in their unavailing efforts to suppress crime. Transportation to a penal colony where the convicts could pursue the ordinary vocations of life, but would have no opportunity to renew their crimes, has long been urged by one newspaper of influence. The general consensus of opinion, however, is in favor of imprisonment for life, after a criminal has shown by repeated offenses that he is incorrigible.

Illinois has an habitual criminal act, but so far as we know it has had no "perceptible influence on the volume of crime" in this state—probably because it is limited to six crimes, not including murder, and more probably because it goes no further than to increase the punishment for a third offense to fifteen years instead of making it for life. Another defect of the act is that it would seem to apply only to cases in which all of the offenses had been committed in this state. If it applied to offenses committed anywhere in the United States, and there was a proper system of interchange of identification cards between the various penal institutions of the country, it is likely that the habitual criminal act would greatly reduce the number of dangerous criminals, especially if a third conviction meant a life sentence. The most dangerous criminals do not really secure a thorough training without serving two or three terms in the penitentiary, and if we had an efficient habitual criminal act which would take hold of them about the time that they were ready to graduate, so to speak, in their profession, and lock them up for the remainder of their lives, society would have to protect itself only against weak and vicious youths who commit one or two offenses and then learn, by a term in jail or in the penitentiary, that the way of the transgressor is so hard that rather than pursue it further they would return to the paths of honest labor.

Mr. Bonaparte's startling recommendation has served a good purpose in calling into prominence a subject which should have received the attention of the various legislatures long ago.—*National Corporation Reporter*.

#### BOOK REVIEWS.

##### JOYCE ON ELECTRIC LAW, 2D EDITION, 2 VOLUMES.

The first edition of this great work published about seven years ago, was well received. The second edition is enlarged and is a marked improvement on the first edition. The author's statement in his preface that he has not prepared a text book simply, is quite true; nor is the work prepared as some text books are, mainly a collection of case law; but it is a book of principles, a treatise in fact as well as in name. The author's statements of legal principles are clear, concise and couched in the best of English. There is no lack of authorities called upon to support the text, about 6,000 cases being cited, which is very nearly double the number cited in the first edition. Numerous statutes are cited which have been carefully construed and explained in conformity with their construction by judicial rulings, such rul-

ings being cited in connection with the extracts from the statutes.

Electric law is new in asense, new in its application but not as to the principles which control. Every decision, however new its application, must be made to conform to old and well established principles, which in regard to the subject treated by the work has necessitated much discernment on the part of the author, in applying the new relations to the established law. The new features or new application to old principles have been well and ably discussed in the new topics incident to corporate ownership of various electrical devices operated by electric power, such as street railways, telegraphs, submarine, land and wireless (though no legal propositions on the latter have yet arisen, nor has congressional aid yet been secured); telephones, electric lighting, electro-metallurgy, electro-plating, electric motors, motor vehicles, post roads. Mr. Joyce also discusses the nature and character of electric companies; the extent to which telegraph and telephone companies are common carriers, and the very interesting question of constitutional and legislative control.

In title VII of Vol. 2, a large space is devoted to the subject of taxation in general and specifically to the taxation of franchises and to licenses. Many intricate questions discussed under this title have been judicially decided by the courts and the sub-heading under this title of when a license tax is not a property tax is especially interesting. The topic of damages and measure of damages under title IX has received a very extended treatment. This is a fruitful subject of litigation and always will be, especially in the matter of damages for delay or nondelivery of telegrams, and the decisions on this subject seem to ring as many variations as there are courts of last resort to guess what ought to be the law.

The author has in preparing this treatise rendered a great service to the profession. His task has not been an easy one, for it has called for the exercise of much learning and research to apply old principles to new conditions, and by his masterly handling of conflicting opinions of courts of last resort has brought order out of chaos.

These two volumes contain an aggregate of about 2000 pages, the mechanical execution of which is of the best class. Bound in buckram, published by The Banks Law Publishing Co., 23 Park Place, New York.

#### BOOKS RECEIVED

Alger & Slater on the New York Employers' Liability Act. Second Edition. Revised and Enlarged, by George W. Alger, of the New York Bar. Albany, N. Y. Matthew Bender & Co. 1907. Price \$3.00. Review will follow.

Volume 2, Index-Digest of New York Court of Appeals Decisions. 1902-1907. By Colin P. Campbell, LL.M., Counselor at Law. N. Y. Reports 164-185. Also an Index to the Notes Found in the Annotated Revised Edition. Published five volumes in one book. Albany, N. Y. Matthew Bender & Company. 1907. Price \$3.75. Review will follow.

#### HUMOR OF THE LAW.

A good one is told on Judge Howard Van Epps, when he was judge of the city court.

A particular friend of his and his bailiff surprised him one morning by bringing in his intended, and prevailed on the judge to marry him.

The judge proceeded with all the dignity of a bishop, grew eloquent, until towards the last of the ceremony his mind got to wandering a little and his thoughts strayed as he beheld the beauty of the bride, and he closed the ceremony with this injunction:

"And may the Lord have mercy on your souls."

Supreme Court Justice Dickey, of Newburg, N. Y., enlivens the proceedings of his court terms with more jocular remarks to witnesses and lawyers than most other judges in this vicinity. Usually the laugh is on the witness or the lawyer, but a young lawyer plodding cumbrously through an opening address to the jury turned the tables the other day.

"Why don't you tell us what this suit is about?" said Judge Dickey sharply. "You're beginning at the end and going backward like a crab. I don't like crabs."

"I don't like crabs, either," retorted the lawyer, not a bit disconcerted at the tittering that ensued. "As a matter of fact, I don't like any crustacean, and since your Honor has opened the subject, permit me to say that especially I don't like lobsters, and more especially I dislike them *a la Newburg*."

The trial proceeded to a conclusion without further reference to matters outside the law and the evidence.

#### WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

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1. **ABATEMENT AND REVIVAL**—Death of Plaintiff Pending Appeal.—The death of plaintiff, in an action on a liquor dealer's bond for sales of liquor to plaintiff's minor son, pending an appeal from a judgment in her favor, held to abate the cause of action on the bond on the reversal of the judgment.—*Ellis v. Brooks*, Tex., 102 S. W. Rep. 94.

2. **ACCIDENT INSURANCE**—Burden of Proving Voluntary Exposure.—In an action on an accident policy under which no indemnity can be claimed for injury resulting from voluntary exposure to unnecessary danger, the burden is upon the insurer to show such exposure.—*Garcelon v. Commercial Travelers' Eastern Acc. Ass'n*, Mass., 81 N. E. Rep. 201.

3. **ACCORD AND SATISFACTION**—Rescission of Accord.—Where one of the parties to an accord and satisfaction refused to complete the satisfaction, the other held entitled to repudiate the accord and sue on the original contract.—*Henderson v. McRae*, Mich., 111 N. W. Rep. 1057.

4. **ACCOUNT STATED**—Implied Assent of Party to be Charged.—Where an account against another is presented to him and he makes no objection to it within a reasonable time, an account stated may be implied.—*Shively v. Eureka Tellurium Gold Min. Co.*, Cal., 89 Pac. Rep. 1073.

5. **ACKNOWLEDGMENT**—Correction After Term of Office.—Where a justice of the peace executed a valueless certificate of probate to a deed, he has no authority, after his term of office has expired, to attach a new certificate thereto.—*Cook v. Pitman*, N. Car., 57 S. E. Rep. 219.

6. **ADVERSE POSSESSION**—Prescriptive Title.—Where the owner of land offers to dedicate it to the public as a park, but continues in possession, excluding the public for a period of over 20 years, he acquires good prescriptive title.—*Canton Co. of Baltimore v. City of Baltimore*, Md., 66 Atl. Rep. 679.

7. **APPEAL AND ERROR**—Bill of Exceptions.—In the absence of an application for a continuance of an appeal until a bill of exceptions could be filed, the appeal would be dismissed where there was no bill of exceptions and nothing to show what plaintiff's motions for a new trial and in arrest of judgment contained.—*Haer v. Van Vickle*, Mo., 102 S. W. Rep. 61.

8. **APPEAL AND ERROR**—Pleading.—That parties go to trial on incomplete pleadings without objection held not to prevent the consideration of assignments of error presented by the bill of exceptions.—*Hardeman v. Williams*, Ala., 43 So. Rep. 726.

9. **APPEAL AND ERROR**—Questions Reviewable.—Where exceptions were not taken to reasons contained in the decision denying a new trial, they could not be reviewed on appeal.—*Taylor v. Ziem*, Mich., 111 N. W. Rep. 1076.

10. **APPEAL AND ERROR**—Review of Facts.—Verdict of jury, approved by trial court and by circuit court of appeals, as to the negligence of captain of a steamboat colliding with government breakwater, cannot be disturbed by the supreme court.—*Davidson S. S. Co. v. United States*, U. S. S. C., 27 Sup. Ct. Rep. 480.

11. **APPEARANCE**—Notice.—Where, after orders allowing compensation to the receiver of a bank, stockholders instituted suit to set such orders aside, such suit precluded the stockholders from claiming that the original orders were entered without notice.—*In re Bank of Newcastle*, Wyo., 89 Pac. Rep. 1035.

12. **ARBITRATION AND AWARD**—Ousting Jurisdiction of Court.—To prevent action for breach of contract on the ground that defendant is entitled to arbitration, it must appear that the arbitration has been made a condition precedent to the right of action.—*Lawson v. Williamson Coal & Coke Co.*, W. Va., 57 S. E. Rep. 258.

13. **ARMY AND NAVY**—Extra Pay.—Special orders, appointing to command of cavalry troop, in absence of its captain of senior subaltern, gives such officer no right to increased pay provided for by Act April 26, 1898, ch. 191, § 7, 30 Stat. 865 [U. S. Comp. St. 1901, p. 895].—*United States v. Mitchell*, U. S. S. C., 27 Sup. Ct. Rep. 463.

14. **ARREST**—Recognizance for Discharge.—Where a recognizance entered into by a poor debtor is void by reason of an illegal arrest, such invalidity is not waived by the application to take the oath for the relief of poor debtors.—*Mann v. Cook*, Mass., 81 N. E. Rep. 286.

15. **ASSAULT AND BATTERY**—Review on Error.—Where in an action for assault and battery defendant's objection to the taking of testimony was sustained and the jury discharged held, that plaintiff was not entitled to *mandamus* to the judge.—*Reynolds v. Mecosta*, Circuit Judge, Mich., 111 N. W. Rep. 1038.

16. **ATTORNEY AND CLIENT**—Attorney's Lien.—Where plaintiff agreed to pay her attorneys one-half of the proceeds recovered by suit, settlement or otherwise, and she settled clandestinely with defendant for \$200 and attorney's fee, defendant was bound to pay \$20 to the attorneys.—*Curtis v. Metropolitan St. Ry. Co.*, Mo., 102 S. W. Rep. 62.

17. **ATTORNEY AND CLIENT**—Attorney's Lien.—Where an attorney has a lien on a judgment, and his client expends money in a suit to enforce it, the attorney must contribute ratably in such expense, and take his percentage out of the net amount realized.—*Fisher v. Mylius*, W. Va., 57 S. E. Rep. 276.

18. **BANKRUPTCY**—Act of Bankruptcy.—Failure of an insolvent to vacate a levy five days before the sale and on each succeeding day including the day of sale held to constitute independent acts of bankruptcy.—*In re Nusbaum*, U. S. D. C., N. D. N. Y., 152 Fed. Rep. 885.

19. **BANKRUPTCY**—Appointment of Receiver.—Where the only property of an alleged bankrupt, so far as shown, is property subject to a mortgage upon which a decree of foreclosure has been entered, before the court will appoint a receiver the petitioning creditors will be required to furnish a bond and include as one of its conditions that they will pay the expenses of the receivership if sufficient assets applicable to that purpose are not discovered.—*In re McKane*, U. S. D. C., E. D. N. Y., 152 Fed. Rep. 783.

20. **BANKRUPTCY**—Attorney's Fees in Sale of Mortgaged Property.—Following the Pennsylvania practice, a court of bankruptcy in that state on a sale of mortgaged property, where the mortgage stipulates for an attorney's commission, will reduce such commission when in excess of the value of the services actually rendered by the attorney.—*In re Wendel*, U. S. D. C., E. D. Pa., 152 Fed. Rep. 672.

21. **BANKRUPTCY**—Effect of Filing Formal Proof of Claim.—One who has filed formal proof of claim against a bankrupt's estate has a *prima facie* status as a creditor, which cannot be collaterally attacked, but continues unless his claim is objected to and disallowed either when first presented or on reconsideration.—*In re Roanoke Furnace Co.*, U. S. D. C., E. D. Pa., 152 Fed. Rep. 846.

22. **BANKRUPTCY**—Fraudulent Conveyances.—In an action by a bankrupt's trustee to recover property alleged to have been transferred by the bankrupt in fraud of creditors, evidence held to show that the purchasers were not *bona fide* purchasers for value.—*Houck v. Christy*, U. S. C. C. of App., Eighth Circuit, 152 Fed. Rep. 612.

23. **BANKRUPTCY**—Life Insurance as an Asset.—The words "cash surrender value," as used in Bankr. Act, ch. 541, § 70, permitting a bankrupt to redeem a policy of insurance by paying a cash surrender value, embrace policies having such value.—*Hiscock v. Mertens*, U. S. S. C., 27 Sup. Ct. Rep. 488.

24. **BANKRUPTCY**—Petition to Vacate.—Bankr. Act, ch. 541, § 15, authorizing vacation of a discharge within a year where the discharge was obtained by the bankrupt's fraud, etc., held inapplicable to a discharge resulting by operation of law from a confirmation of the bankrupt's offer of composition.—*In re Jersey Island Packing Co.*, U. S. D. C., N. D. Cal., 152 Fed. Rep. 839.

25. **BILLS AND NOTES**—Parties Plaintiff.—An action on a note may be brought in the name of the payee, a foreign corporation, although a foreign assignee has legal title to it.—*Wolboro Loan & Banking Co. v. Rollins*, Mass., 81 N. E. Rep. 204.

26. **BANKRUPTCY—Provable Debts.**—The words, "while acting as an officer or in any fiduciary capacity," as used in Bankr. Act, ch. 541, § 17, subd. 4, extend to fraud, embezzlement, and misappropriation, as well as to defalcation.—*Tindle v. Birkett*, U. S. S. C., 27 Sup. Ct. Rep. 498.

27. **BANKRUPTCY—Stockholders Liability.**—The excess statutory liability of the stockholders of a bankrupt corporation under Ky. St. 1899, § 547, held not an asset of the corporation enforceable by its trustee in bankruptcy, but a liability which the corporation's creditors were entitled to enforce independent of the bankruptcy proceedings.—*Tiger Shoe Mfg. Co.'s Trustee v. Shanklin*, Ky., 102 S. W. Rep. 295.

28. **BANKRUPTCY—Who Are Parties in Interest.**—The term "parties in interest," as used in Bankr. Act July 1, 1898, ch. 541, § 57d, 80 Stat. 560 [U. S. Comp. St. 1901 p. 3443], which permits parties in interest to object to the allowance of claims against the estate, applies only to those who have an interest in the *res* which is to be administered and distributed in the proceeding, and does not include those who are merely debtors or alleged debtors of the bankrupt.—*In re Sully*, U. S. C. C. of App., Second Circuit, 152 Fed. Rep. 619.

29. **BANKRUPTCY—Wrongful Conversion of Trust Fund.**—Where a bank acting merely as collecting agent for another bank, under an agreement which required it to remit collections as made, collected a draft and mingled the proceeds with its own funds, and became bankrupt without having remitted, the bank owning the draft is entitled to reclaim as its own so much at least of the bankrupt bank's money as remained on hand at all times between the date of the collection and the bankruptcy.—*In re Northrup*, U. S. D. C., N. D. N. Y., 152 Fed. Rep. 768.

30. **BANKS AND BANKING—Stockholders Liability.**—Where a father voluntarily created a trust of certain national bank shares for the benefit of his children, in good faith and not for the purpose of avoiding liability, he was not personally liable as a shareholder on the failure of the bank for the statutory liability imposed by Rev. St. §§ 5151-5152 [U. S. Comp. St. 1901, p. 3465].—*Fowler v. Gowing*, U. S. C. C., N. D. N. Y., 152 Fed. Rep. 591.

31. **BILLS AND NOTES—Bona Fide Purchaser.**—An indorsee of a note as collateral security, in due course and without notice, is a *bona fide* purchaser, and may collect it and apply its proceeds to the payment of the debt secured, and hold the balance in trust for the indorser.—*Martin v. German American Nat. Bank, Tex.*, 102 S. W. Rep. 131.

32. **BOUNDARIES—Descriptions.**—A general description of land in a deed describing it as "on the road" does not control a particular description in the deed by metes and bounds, whereby the land is bounded by the east line of the road.—*Hamlin v. Attorney General*, Mass., 81 N. E. Rep. 275.

33. **BOUNDARIES—Navigable Waters.**—A riparian owner's title extends to the thread of an unnavigable stream, and in the case of a navigable stream to high-water mark or the limit of the bed; the title to the bed being in the state for the use of the public.—*Harrison v. Fite*, U. S. C. C. of App., Eighth Circuit, 148 Fed. Rep. 781.

34. **BROKERS—Public Lands.**—A contract whereby a party holding a homestead entry on government land agrees with another party to pay him a certain per cent. if he will find a purchaser for such land held not void as in violation of the land laws of the United States.—*Hoyle v. Johnson*, Okla., 89 Pac. Rep. 1119.

35. **BUILDING AND LOAN ASSOCIATIONS—Insolvency.**—Where a building and loan association goes into receivership, a borrowing member is not entitled to have stock dues paid by him credited upon his debt to the association.—*Sokoloski v. New South Building & Loan Assn.*, Miss., 48 So. Rep. 674.

36. **CARRIERS—Loss of Goods After Assignment.**—The consignee of goods or assignee of bill of lading held a proper party plaintiff in an action against a carrier for loss occurring after the assignment and vesting of the title in the consignee or assignee.—*Gratiot St. Ware-*

house Co. v. Missouri, K. & T. Ry. Co., Mo., 102 S. W. Rep. 11.

37. **CARRIERS—Negligence.**—Failure of the operatives of a train to notify intestate that a car about which he was working as a licensee was about to be coupled into a train held not to constitute gross negligence sufficient to sustain a recovery for intestate's death.—*Naus v. Bostor & M. R. R.*, Mass., 81 N. E. Rep. 280.

38. **CARRIERS—Perishable Goods.**—Where perishable goods are delivered to a common carrier in a sound condition and delivered in a damaged state, the burden is on the carrier to prove the damage was not occasioned by his negligence.—*Brennison v. Pennsylvania R. Co.*, Minn., 111 N. W. Rep. 945.

39. **CARRIERS—Tender of Fare by Third Person.**—Tender of fare by a third person with the passenger's consent is effective or otherwise to prevent a rightful ejection in the same manner as if the tender had been made by the passenger himself.—*Missouri, K. & T. Ry. Co. v. Smith*, U. S. C. C. of App., Eighth Circuit, 152 Fed. Rep. 608.

40. **COMMERCE—Regulation of Employees.**—Act Cong., ch. 370, § 10, held not invalid as penalizing an interstate carrier for discharging an employee because of his membership in a labor organization, etc., without reference to whether he was engaged in interstate commerce or solely in intrastate commerce.—*United States v. Adair*, U. S. D. C., E. D. Ky., 152 Fed. Rep. 737.

41. **COMMERCE—Regulation of Railroad Rates.**—The provisions of Code 1906, § 2482, imposing a forfeiture on any railroad which shall demand from any person any greater toll than provided by the act, are void as to interstate commerce.—*Jennings v. Big Sandy & C. R. Co.*, W. Va., 57 S. E. Rep. 272.

42. **CONSTITUTIONAL LAW—Due Process of Law.**—The police board of a city by issuing a liquor license to nominee of a trustee in bankruptcy of the original licensee held not to deprive one to whom the original license had been assigned as security of property without due process of law.—*Tracy v. Ginzberg*, U. S. S. C., 27 Sup. Ct. Rep. 461.

43. **CONSTITUTIONAL LAW—Impairing Obligation of Contract.**—Acts 1906, p. 838, ch. 457, prohibiting the construction of a railroad within certain territory, held, in view of a company's rights under its charter, (Acts 1826, ch. 123, § 14), to impair the obligation of a contract.—*Baltimore & O. R. Co. v. Waters*, Md., 66 Atl. Rep. 685.

44. **CONSTITUTIONAL LAW—Regulating Relation Between Interstate Carriers and Employees.**—Act Cong., June 1, 1898, ch. 370, § 10, 30 Stat. 428 [U. S. Comp. St. 1901, p. 3211], regulating the relation between interstate carriers and their employees held not in violation of Const. U. S. Amend. 5, as a deprivation of the carrier's liberty of contract without due process of law.—*United States v. Adair*, U. S. D. C., E. D. Ky., 152 Fed. Rep. 737.

45. **CONSTITUTIONAL LAW—Tax Sales of Land.**—Act March 14, 1879 (Acts 1874, p. 69), providing for a clerk's deed to any one redeeming lands during the second year after delinquency of taxes, without notice to the owner, held unconstitutional because it authorized appropriation of delinquent lands to the payment of taxes without due process of law.—*Mason v. Gates*, Ark., 102 S. W. Rep. 190.

46. **CONTRIBUTIONS—Joint Tort Feasors.**—Where a judgment for damages is rendered against joint tortfeasors, contribution will not be enforced in favor of one defendant who pays the judgment except as to court costs.—*Fakes v. Price*, Okla., 89 Pac. Rep. 1123.

47. **CORPORATIONS—Liability of Officers.**—Directors and officers of banking corporation held not relieved from liability for loss due to mismanagement on account of ignorance of matters which it was their duty to know, or by trusting such matters to others.—*Elliott v. Farmers' Bank of Philippi*, W. Va., 57 S. E. Rep. 242.

48. **CORPORATIONS—Loans by President.**—Where the president of a corporation in good faith loans to the company money for its use, he may take a note given as so-

curity for the loan, and purchase the company's property at a judicial sale for his own benefit.—*Law v. Fuller, Pa.*, 66 Atl. Rep. 754.

49. CORPORATIONS—Powers of President.—In the absence of a custom under which the president of a corporation made sales of lands without authority of the board of directors, he was not entitled to make such sales without a special or general resolution from the board conferring such authority.—*Ansley Land Co. v. H. Weston Lumber Co., U. S. C. C., E. D. Pa.*, 152 Fed. Rep. 841.

50. CORPORATIONS—Service of Process.—A federal court cannot acquire jurisdiction over a foreign corporation which is not doing business in the state of suit, and has no property within such state with relation to which the suit is brought, by the service of the process on an officer who is casually within the state.—*Case v. Smith, Lineaweaver & Co., U. S. C. C., E. D. N. Y.*, 152 Fed. Rep. 730.

51. CORPORATIONS—Service on Officer Temporarily in State.—Jurisdiction of a corporation of another state which has no place of business and is not doing business in the state of suit cannot be acquired by service of process on one of its officers temporarily in such state.—*Donovan v. Dixieland Amusement Co., U. S. C. C., E. D. N. Y.*, 152 Fed. Rep. 661.

52. CORPORATIONS—Stockholder's Liability.—A creditor of a corporation suing stockholders for unpaid subscriptions held not limited to amount represented by the proportion which defendants' unpaid subscriptions bear to all unpaid subscriptions.—*Blood v. La Serena Land & Water Co., Cal.*, 89 Pac. Rep. 1090.

53. COVENANTS—Costs and Expenses of Litigation.—Where a grantee of a warranty deed was compelled to defend an ejectment suit brought by the owners of the paramount title, held, that he was entitled to recover expenses of suit.—*Quick v. Walker, Mo.*, 102 S. W. Rep. 83.

54. CRIMINAL EVIDENCE—Circumstantial Evidence.—It was within the discretion of the court to refuse to allow counsel to read to the jury the brief of the evidence in the record in the supreme court in another case, to make clear the principle of circumstantial evidence.—*Handley v. State, Ga.*, 57 S. E. Rep. 236.

55. CRIMINAL EVIDENCE—Conspiracy.—Where the evidence establishes a *prima facie* case of conspiracy, acts and declarations by the parties in pursuance thereof, not in the presence of one another, are admissible in evidence.—*State v. Grove, W. Va.*, 57 S. E. Rep. 296.

56. CRIMINAL TRIAL—Former Jeopardy.—The conviction of a party under a local ordinance of a district for operating a pool room was not a bar to prosecution by the state for the same act.—*Ehrlick v. Commonwealth, Ky.*, 102 S. W. Rep. 269.

57. CRIMINAL TRIAL—Killing Turkeys to Defend Crop.—Where the right of accused to defend his crop against damages by turkeys was an issue in the trial for the killing of the turkeys, it should have been submitted to the jury in the court's instructions.—*Swinger v. State, Tex.*, 102 S. W. Rep. 114.

58. CRIMINAL TRIAL—Opinion Evidence.—A witness who has actual knowledge of the homicide should be allowed to supplement his description by his opinion as to the intoxication of accused at the time.—*Commonwealth v. Elyer, Pa.*, 66 Atl. Rep. 746.

59. DEDICATION—Right of Way.—When a railroad company maintains a way over its tracks and uninclosed land for about 40 years for the use of its patrons, and incidentally for the public, the presumption is that the user was permissive.—*Railroad Co. v. Village of Roseville, Ohio*, 81 N. E. Rep. 178.

60. DEEDS—Waiver of Conditions.—A donor of land conveyed upon condition that it be continuously used for a school house site held to have waived the condition by failing to object to the relocation of the building after its removal.—*Trustees of Common School Dist. No. 7 v. Patrick, Ky.*, 102 S. W. Rep. 237.

61. EASEMENTS—Obstruction.—In a suit against a railroad company for obstructing a passway, the fact that some of the plaintiffs were made sick by being compelled to wade through water held back by the obstruction was too remote an element of damage to warrant a recovery therefor.—*Big Sandy Ry. Co. v. Bays, Ky.*, 102 S. W. Rep. 802.

62. EASEMENTS—Rights as Against Purchaser of Servient Estate.—An unrecorded writing not under seal, giving a person permission to use an alley, is of no effect as a grant of a private way as against a registered deed of the property subsequently executed to another person.—*Tise v. Whitaker Harvey Co., N. Car.*, 57 S. E. Rep. 210.

63. ELECTIONS—Disfranchised Voters.—Voters are disfranchised where they are denied the right to vote, or where after being permitted to vote their votes by reason of fraud, violence, or other wrongdoing have not been counted or have not been counted as cast.—*Scholl v. Bell, Ky.*, 102 S. W. Rep. 248.

64. ELECTIONS—Vacation of Election.—Where, if disfranchised voters had all voted for the defeated candidates, they would have been elected by large majorities, it was impossible to determine the result of the election, which should therefore be declared entirely void.—*Scholl v. Bell, Ky.*, 102 S. W. Rep. 248.

65. ESTOPPEL—Position in Judicial Proceedings.—Where in a proceeding to enforce a mechanic's lien the building contractor is a party, and admits the right of the lien claimant to the money due from the owner on the contract, the contractor is estopped from afterwards demanding the money from the owner.—*Union Lumber Co. v. Simon, Cal.*, 89 Pac. Rep. 1077.

66. EVIDENCE—Decision of City to Engage in Removing Ashes.—The decision of a city to engage in the removal of ashes within its limits is not a legislative act, and need not be signified by an ordinance, but may be proved by any evidence.—*Johnson v. City of Somerville, Mass.*, 81 N. E. Rep. 268.

67. EXECUTION—Estoppel to Assert Mistake.—Owner of land sold at judgment sale held estopped as against innocent purchaser from purchaser at such sale to claim the right to redeem on the ground of mistake in appraisal.—*Farmers' & Shippers' Leaf Tobacco Warehouse Co. v. Parry, Ky.*, 102 S. W. Rep. 303.

68. FALSE PRETENSES—Acts Constituting.—A person who, for the purpose of obtaining goods, falsely represents that he has a contract for the upholstery of certain articles at a certain price, and on the strength of which representation the goods are given to him, is guilty of obtaining goods by false pretenses.—*Martin v. Commonwealth, Ky.*, 102 S. W. Rep. 273.

69. FEDERAL COURTS—Case Involving Application of Federal Constitution.—A case in which contention is made that decree violates the right of trial by jury and to due process of law does not involve construction of constitution, within Act of March 3, 1891, ch. 517, § 5, authorizing direct appeals to the federal supreme court, where real issue was as to whether such prior decree was *res judicata*.—*Empire State-Idaho Mining & Developing Co. v. Hanley, U. S. C. C.*, 27 Sup. Ct. Rep. 476.

70. FRAUD—Inducing Testatrix to Execute Invalid Codicil.—To create liability against defendant for depriving plaintiff of a legacy through fraud in inducing testatrix to execute an invalid codicil held plaintiff must show facts excluding the possibility that testatrix changed her purpose respecting the legacy before her death.—*Lewis v. Corbin, Mass.*, 81 N. E. Rep. 248.

71. FRAUDULENT CONVEYANCES—Evidence.—The sale of a large stock of goods in bulk by an insolvent, without invoice or appraisal, and made in haste, is some evidence from which a jury might infer fraud.—*Irwin Phillips & Co. v. Rule, Mo.*, 102 S. W. Rep. 32.

72. FRAUDULENT CONVEYANCES—Husband and Wife.—Money earned by a wife in a professional capacity which she uses to pay for family necessities is a good consideration for an agreement of the husband to assign a pros-

pective inheritance to her as compensation for the amounts so expended.—*Aultman Engine & Thresher Co. v. Greenlee*, Iowa, 111 N. W. Rep. 1007.

73. **GARNISHMENT**—Proceeds of Catch of Fishing Schooner.—The proceeds of a catch of a fishing schooner which the captain had authority to collect held subject to trustee process for the payment of a personal debt of such captain as against the owners of the schooner.—*Adams v. Augustine*, Mass., 81 N. E. Rep. 192.

74. **GIFTS**—Reservation of Certain Interest.—Reservation of the interest to accrue on a bond during the life of the donor was not sufficient to avoid an absolute gift of the bond.—*Bone v. Holmes*, Mass., 81 N. E. Rep. 293.

75. **GOOD WILL**—Implied Covenants.—A sale of an interest in the good will of a dental business without an express agreement to refrain from competition held to imply a covenant not to compete so as to injure or destroy the business sold.—*Foss v. Roby*, Mass., 81 N. E. Rep. 169.

76. **GUARDIAN AND WARD**—Conversion by Guardian.—The failure of a guardian to pay his debt due to the ward's estate and invest the same for the benefit of the ward held to amount to a conversion of that amount of the ward's estate.—*United States Fidelity & Guaranty Co. v. State*, Ind., 81 N. E. Rep. 226.

77. **HABEAS CORPUS**—Custody of Child.—In a proceeding to obtain the custody of a child, held, that the father is entitled to the custody of child as against the grandmother.—*Wofford & Clark*, Ark., 102 S. W. Rep. 216.

78. **HABEAS CORPUS**—Federal Interference with State Courts.—Relief by *habeas corpus* by a federal court to a person held by state authorities under a commitment entered after a jury had returned a verdict of not guilty by reason of insanity will not lie.—*Uquhart v. Brown*, U. S. S. C., 27 Sup. Ct. Rep. 459.

79. **HIGHWAYS**—Boundaries.—Where the boundary lines of a highway have never been established by any competent authority, but the right of the public to travel thereon has been established by continuous use, the width of the road is determined by the width of the use.—*Anderson v. City of Huntington*, Ind., 81 N. E. Rep. 223.

80. **HOESTEAD**—Oil and Gas Lease.—Oil and gas lease by widow on lands owned by her and her children and occupied in part as a homestead held not to be void but to convey her individual interest.—*Compton v. People's Gas Co.*, Kan., 89 Pac. Rep. 1039.

81. **HOMICIDE**—Exclusion of Evidence.—On a trial for homicide, the exclusion of evidence of a statement not communicated to accused held not prejudicial to accused for the statement was too indefinite to constitute an actual threat.—*Newton v. Commonwealth*, Ky., 102 S. W. Rep. 264.

82. **HOMICIDE**—Intoxication.—While mere intoxication is no defense to a prosecution for homicide, insanity is a defense, whether resulting from intoxication or any other cause.—*Commonwealth v. Parsons*, Mass., 81 N. E. Rep. 291.

83. **INJUNCTION**—Injury to Business.—Equity has jurisdiction to restrain one from wrongfully intimidating by threats to bring suits for infringements of a patent against the customers of a competitor if they buy or use his goods.—*Schwanbeck Bros. v. A. Backus, Jr., & Sons*, Mich., 111 N. W. Rep. 1046.

84. **INJUNCTION**—Restraining Multiplicity of Suits.—A federal court of equity has power to enjoin either party to a suit before it from prosecuting other suits, subsequently brought, relating to the same subject-matter, where it would be contrary to equity and good conscience, although such suits may be in foreign jurisdictions.—*Commercial Acetylene Co. v. Avery Portable Lighting Co.*, U. S. C. C., E. D. Wis., 152 Fed. Rep. 642.

85. **INTOXICATING LIQUORS**—Sale to Minor.—Under the statute, a mother of a minor held entitled to maintain an action on a liquor dealer's bond for sales made to the minor during the life of his father who died pending an action by him on the bond for such sales.—*Ellis v. Brooks*, Tex., 102 S. W. Rep. 94.

86. **JUDGMENT**—Conditional Decree.—A decree in equity granting leave to a complainant to substitute counsel on condition that he pay a certain sum to the attorneys discharged for their fees and disbursements is conditional only and will not support an action at law to recover such sum.—*Du Bois v. Seymour*, U. S. C. C. of App., Third Circuit, 152 Fed. Rep. 600.

87. **JUSTICES OF THE PEACE**—Entry of Judgment.—Where a judgment was entered on the docket of a justice by his clerk, but not signed by the justice, injunction is not necessary to prevent its enforcement.—*Park v. Callaway*, Ga., 57 S. E. Rep. 229.

87. **JUDGMENT**—Matters Concluded.—A judgment held not to estop plaintiff from maintaining an action for the specific performance of an option contract as to certain land on the ground that it was *res judicata* of his cause of action.—*Shakespeare v. Caldwell Land & Lumber Co.*, N. Car., 57 S. E. Rep. 213.

89. **JUDGMENT**—Satisfaction.—A judgment creditor purchasing the property of a third person at an execution sale and partially satisfying the judgment held entitled to a vacation of the satisfaction.—*Bailey v. Buchanan*, Mo., 102 S. W. Rep. 36.

90. **LANDLORD AND TENANT**—Acceptance of Possession.—Acceptance of the premises by the lessee after the date on which the lessor was bound to deliver possession thereof held no waiver of the lessee's right of action for damages prior to the acceptance.—*Huntington Easy Payment Co. v. Parsons*, W. Va., 57 S. E. Rep. 253.

91. **LANDLORD AND TENANT**—Forcible Entry and Detainer.—In a forcible entry and detainer in justice court, nothing more formal than the appearance of the traverser in the circuit court and his understanding to uphold the verdict in the country is necessary to constitute a joinder of issue on the traverse within Civil Code Prac. §§ 463, 465, requiring such joinder.—*Check v. Reiter*, Ky., 102 S. W. Rep. 287.

92. **LANDLORD AND TENANT**—Landlord's Lien.—Though landlord's lien is only enforced against purchasers who have notice, and where the purchaser of a crop grown on rented land has notice of facts and circumstances which would put a prudent man on inquiry, it is notice of all an inquiry would disclose.—*Maelzer v. Swan*, Kan., 89 Pac. Rep. 1037.

93. **LANDLORD AND TENANT**—Right to Crops.—One who secures and maintains possession of land by an injunction wrongfully issued after the landlord has lawfully re-entered for conditions broken by the tenant is not entitled to the crops grown thereon and harvested by him.—*Myer v. Roberts*, Oreg., 89 Pac. Rep. 1051.

94. **LANDLORD AND TENANT**—Surrender of Lease.—The surrender of leased premises by the lessee and their acceptance by the lessor during the term closes the term and the lease.—*American Bonding Co. v. Pueblo Inv. Co.*, U. S. C. C. of App., Eighth Circuit, 150 Fed. Rep. 17.

95. **LIBEL AND SLANDER**—Mitigation.—In order to constitute a good plea in mitigation of an action for libel, it is necessary to allege and prove knowledge of the facts set up in mitigation, or investigation and belief that the matters were true, prior to the publication.—*Tingley v. Times Mirror Co.*, Cal., 89 Pac. Rep. 1007.

96. **LIENS**—Raw Materials Sold for Manufacture.—Contract between a bankrupt and foreign brokers for the purchase of silk filatures which were subsequently delivered to the bankrupt on credit for manufacture held insufficient to create an equitable lien in favor of the brokers as against the bankrupt's other creditors.—*In re Liberty Silk Co.*, U. S. D. C., S. D. N. Y., 152 Fed. Rep. 844.

97. **LIFE INSURANCE**—Divorced Wife as Beneficiary.—A wife designated a beneficiary in a mutual benefit certificate held entitled to recover thereon, though the parties were divorced.—*Schmidt v. Hauer*, Iowa, 111 N. W. Rep. 966.

98. **LIMITATION OF ACTION**—Acknowledgment of Debt.—Where a contractor executed his note to a materialman for the sum of \$5,000, such note constituted an acknowl-

edgment of indebtedness to that amount within the statute of limitations as to the date the note was given.—United States v. Axman, U. S. C. C., N. D. Cal., 152 Fed. Rep. 816.

99. **MASTER AND SERVANT—Defective Appliances.**—Where a machine originally furnished in a sawmill was unsafe, and an appliance was put on to render it less dangerous, the employer was required to see that the appliance was safely secured.—Giacomini v. Pacific Lumber Co., Cal., 89 Pac. Rep. 1069.

100. **MASTER AND SERVANT—Fellow Servants.**—An employee whose duty it is to fire a steam shovel used in the construction of a railroad is not a fellow servant of employees engaged in operating a train on the railroad.—Oliver v. Rouch, Ky., 102 S. W. Rep. 274.

101. **MASTER AND SERVANT—Liability for Torts of Servant.**—The test of one's liability for negligence of his alleged servant is his right to control his imputed agent in the casual act or omission at the very instant of its performance or neglect.—Standard Oil Co. v. Parkinson, U. S. C. C. of App., Eighth Circuit, 152 Fed. Rep. 681.

102. **MASTER AND SERVANT—Safe Place to Work.**—Where a servant enters upon and continues in service in an unsafe place, the dangers of which are known and appreciated by him, he waives the performance by the master of the duty to furnish a safe place in which to work.—Lavery v. Hambrick, W. Va., 57 S. E. Rep. 240.

103. **MECHANICS' LIENS—Drilling Oil Well.**—One who drills an oil well on lands in which the owner of the well has no interest beyond that acquired by a lease cannot obtain mechanic's lien for such labor as against the lease or personality of lessee.—Eastern Oil Co. v. McEvoy, Kan., 89 Pac. Rep. 1048.

104. **MINES AND MINERALS—Conflicting Leases.**—Under separate oil and gas leases by co-tenants, lessees, held each entitled to possession to mine for oil and gas, but neither entitled to exclusive possession.—Compton v. Peoples Gas Co., Kan., 89 Pac. Rep. 1089.

105. **MINES AND MINERALS—Leases.**—As to the lessor, a mining lease after the expiration of the term is an executed contract, and is admissible as evidence under a common count to prove the amount he is entitled to recover.—Lawson v. Williamson Coal & Coke Co., W. Va., 57 S. E. Rep. 258.

106. **MINES AND MINERALS—Mining Privileges.**—A parol grant of privilege of mining on lands is a license, and conveys no title to any ores not severed by the licensee and reduced to possession.—McCullagh v. Rains, Kan., 89 Pac. Rep. 1041.

107. **MUNICIPAL CORPORATIONS—Availability of General Fund.**—Funds in a city treasury accumulated from license taxes, fines, etc., may be applied to any governmental purpose, being available for any purpose for which taxes might have been levied.—Overall v. City of Madisonville, Ky., 102 S. W. Rep. 278.

108. **MUNICIPAL CORPORATIONS—Who are Police Officers.**—An employee of a union station terminal company clothed by municipal ordinance with the powers of a police officer held not a member of the police force within the meaning of an ordinance making the city liable for the funeral expenses of policemen killed in the discharge of their duty, etc.—Zipperer v. City of Savannah, Ga., 57 S. E. Rep. 811.

109. **NUISANCE—Gaming House.**—A house where persons are permitted habitually to assemble to bet money on the result of a horse race is a gaming house, and therefore a common nuisance.—Ehrlick v. Commonwealth, Ky., 102 S. W. Rep. 289.

110. **PATENTS—Anticipation.**—A public knowledge and use of a device by others prior to the application for a patent therefor being shown, the burden is cast upon the patentee to furnish convincing proof that the anticipation was anticipated by him in making the invention.—New England Motor Co. v. B. F. Sturtevant, U. S. C. C. of App., Second Circuit, 150 Fed. Rep. 181.

111. **POST OFFICE—Right to Exclude Publication as Second Class Matter.**—The act of a Post Master General

in denying a publisher the right to mail his publication as second-class mail matter held subject to review by the federal courts, where such officer acted without authority or in excess of the power granted to him by congress.—Lewis Pub. Co. v. Wyman, U. S. D. C., E. D. Mo., 152 Fed. Rep. 787.

112. **PRINCIPAL AND AGENT—Authority of Agent.**—Persons dealing with one who has recently been a duly authorized agent of another held entitled to rely on the continuance of his authority until notified of its revocation.—Etna Ins. Co. v. Stambaugh Thompson Co., Ohio, 81 N. E. Rep. 178.

113. **PRINCIPAL AND SURETY—Negligence of Creditor.**—Where plaintiff had not yet paid a debt, and was not the owner of the note by right of subrogation, his failure to sue the principal upon a request from the surety to do so did not discharge the surety.—Wilson v. White, Ark., 102 S. W. Rep. 201.

114. **PUBLIC LANDS—Mistake in Issuing Patent to Land.**—Where a patent to land is issued by the government to the wrong party because of an erroneous view of the law taken by the officers, or by a gross or fraudulent mistake of the facts, the rightful claimant is entitled to have the same vacated.—De Marchel v. Teagarden, U. S. C. C., N. D. Ark., 152 Fed. Rep. 662.

115. **PUBLIC LANDS—Sale of Homestead Before Patent Granted.**—Sale of homestead claim before patent, though void, may be treated by the Land Department as abandonment of the homestead application and entry.—Love v. Flahive, U. S. S. C., 27 Sup. Ct. Rep. 486.

116. **RAILROADS—Contributory Negligence.**—A person held not relieved of the duty to exercise due care by the fact that the engineer in charge of the engine causing the injury was negligent.—Byrnes v. New York, N. H. & H. R. Co., Mass., 81 N. E. Rep. 187.

117. **RAILROADS—Duty to Stop and Take on Passenger.**—A person intending to take passage on train at a flag station held entitled to actual damages resulting from the failure to stop the train by reason of the engineer's negligence, but not entitled to punitive damages.—Williams v. Carolina & N. W. R. Co., N. Car., 57 S. E. Rep. 216.

118. **RAILROADS—Liability for Damage to Adjacent Property.**—Where real estate has been depreciated in value by reason of the erection of railroad stock pens near it, the owner is entitled to damages, though property generally, including the real estate in question, has increased in value since the erection of the pens.—Gulf, C. & S. F. Ry. Co. v. Blue, Tex., 102 S. W. Rep. 128.

119. **RAILROADS—Liability of Sleeping Car Company for Baggage.**—It is the duty of a sleeping car company to exercise reasonable care to guard the effects of a passenger from theft.—Pullman Co. v. Green, Ga., 57 S. E. Rep. 238.

120. **RAILROADS—Passengers.**—A passenger on a freight train does not lose his character as a passenger by leaving the train to talk with an acquaintance during time cars are being switched at a station.—Arkansas Cent. R. Co. v. Bennett, Ark., 102 S. W. Rep. 198.

121. **REMOVAL OF CAUSES—Jurisdictional Amount.**—Where the amount claimed by a plaintiff in his complaint in the state court is sufficient to give a federal court jurisdiction, and the cause is otherwise removable, the plaintiff cannot defeat such jurisdiction after removal by offering to reduce the amount of his claim.—Donovan v. Dixieland Amusement Co., U. S. C. C., E. D. N. Y., 151 Fed. Rep. 661.

122. **SHERIFFS AND CONSTABLES—Action on Bond.**—In an action against a constable and the sureties on his official bond for seizure of plaintiff's property under attachments against another, the liability of the sureties held limited to the penalty of the bond.—Albie v. Jones, Ark., 102 S. W. Rep. 222.

123. **SHIPPING—Collision.**—A captain navigating in Lake Superior held not, as a matter of law, free from negligence in colliding with an uncompleted extension of a government breakwater.—Davidson S. S. Co. v. United States, U. S. S. C., 27 Sup. Ct. Rep. 480.

124. **SALES**—Conditional Sales.—Under the Indiana Law, a conditional sale of personal property by a manufacturer to a retailer for the purpose of resale, reserving title until paid for, is void.—*In re Gilligan*, U. S. C. C. of App., Seventh Circuit, 152 Fed. Rep. 605.
125. **SALES**—Offer to Deliver.—Where there has been no delivery, the seller, to maintain an action for the price, must aver and prove an offer to deliver, a refusal to accept, and also that he is ready or deliver, or allege some valid excuse for inability to deliver.—*Haynes v. Brown*, Okla., 89 Pac. Rep. 1124.
126. **SCHOOLS AND SCHOOL DISTRICTS**—Taxation.—Taxpayers held not estopped from enjoining the collection of an illegal tax by notice of creation of the debt or payment of the tax for two years.—*Howard v. Trustees of School District No. 27*, Ky., 102 S. W. Rep. 318.
127. **SPECIFIC PERFORMANCE**—Defenses.—An original vendee of land held not entitled to take advantage of the fact that one to whom he sold a part of the land could not compel the original vendor to execute a deed to him to defeat specific performance of such subsequent contract.—*Sproull v. Miles*, Ark., 102 S. W. Rep. 204.
128. **STREET RAILROADS**—Conditions of Incorporation.—A street railway company incorporated under Laws N. Y. 1884, ch. 252, which imposed duty of paying a portion of the street, cannot claim benefit of contract exemption enjoyed by predecessor.—*Rochester Ry. Co. v. City of Rochester*, U. S. S. C., 27 Sup. Ct. Rep. 469.
129. **STREET RAILROADS**—Injury to Alighting Passenger.—A street car company's rule prohibiting stops between cross-streets held no defense in an action for injury to a passenger caused by a premature starting of a car after it had been stopped in violation of such rule.—*Dreyfus v. St. Louis & S. Ry. Co., Mo.*, 102 S. W. Rep. 53.
130. **STREET RAILROADS**—Stopping Places.—Where one in charge of a street car knows a passenger is alighting, the duty to him is the same whether the stop is made at a regular stopping place or not.—*Murphy v. Metropolitan St. Ry. Co., Mo.*, 102 S. W. Rep. 64.
131. **SUBROGATION**—Persons Acting in Official Capacity.—Where a sheriff who was liable for a fine adjudged against his prisoner paid it pursuant to orders of the county court, he became subrogated to all rights of the county in the obligation executed by the prisoner and defendant as surety.—*Wilson v. White*, Ark., 102 S. W. Rep. 201.
132. **TAXATION**—Illegal Tax.—Where a tax was levied in pursuance of an unconstitutional statute, it was illegal, and it was error to refuse to enjoin the same.—*Green v. Hutchinson*, Ga., 57 S. E. Rep. 353.
133. **TELEGRAPHS AND TELEPHONES**—Damages for Delayed Message.—It being the duty of the addressee in a telegram to minimize the damages resulting from a telegraph company's negligent delay in delivery, he may recover for his expense in lessening such damage.—*Postal Telegraph Co. of Texas v. L. W. Levy & Co.*, Tex., 102 S. W. Rep. 184.
134. **TENANCY IN COMMON**—Rights Inter Se.—Where a co-tenant purchases an outstanding interest in the property held in common, the other tenants in common must pay their proportionate shares of the amount paid.—*Flat Top Grocery Co. v. Bailey*, W. Va., 57 S. E. Rep. 302.
135. **TRUSTS**—Acts of Donor.—The rule that a trustee may not invest trust funds in national bank stock does not apply to a trust voluntarily created by a donor as to such stock.—*Fowler v. Gowing*, U. S. C. C., N. D. N. Y., 152 Fed. Rep. 801.
136. **TRUSTS**—Compensation for Management of Estate.—The court held entitled to adjudge that an attorney acting as trustee in the management of property belonging to his client was not entitled to compensation.—*Folk v. Wind*, Mo., 102 S. W. Rep. 1.
137. **TRUSTS**—Enforcement of Deed of Trust.—Equity has jurisdiction to enforce a deed of trust at the suit of a creditor when the debt secured is disputed and the trustee refuses to sue.—*Washington Nat. Building & Loan Assn. v. Heironimus*, W. Va., 57 S. E. Rep. 256.
138. **TRUSTS**—Voluntary Settlement.—A voluntary settlement, which has been fully executed without the reservation of any power of revocation, cannot be revoked without proof of mental unsoundness, mistake, fraud, or undue influence.—*Sands v. Old Colony Trust Co.*, Mass., 81 N. E. Rep. 800.
139. **WILLS**—Construction.—In computing the proportional shares of those having the income of a trust for life to a residuary estate, held, that the principal of the trust should be taken as the sum given.—*Leask v. Hoagland*, N. Y., 80 N. E. Rep. 919.
140. **WILLS**—Discretion of Trustees in Withholding Legacy.—A testator has a right to postpone the payment of a legacy to a child to a definite period beyond the majority of the legatee, and also the right to have its payment further withheld at the discretion of his trustees, and in such case the trust is an active and continuing one, and, in the absence of fraud or an abuse thereof, the discretion of the trustees cannot be controlled by the courts.—*Ballantine v. Ballantine*, U. S. C. C., D. N. J., 152 Fed. Rep. 775.
141. **WILLS**—Intention of Testatrix.—Where words employed in devising land do not necessarily create an estate upon condition, nature and purposes of beneficiary organization must be taken into account in arriving at intention of testatrix.—*Adams v. First Baptist Church of St. Charles*, Mich., 111 N. W. Rep. 757.
142. **WILLS**—Renunciation by Widow.—Where three of the testator's six children had been portioned off, the widow by renouncing the will shared equally with the other three, receiving one-fourth of the estate.—*Callicott & Norlett v. Callicott*, Miss., 43 So. Rep. 616.
143. **WILLS**—Testamentary Capacity.—A person has testamentary capacity who understands the nature of a will, and is capable of remembering generally the property subject to disposition and the persons related to him, and of expressing any intelligible scheme of disposition.—*Slaughter v. Heath*, Ga., 57 S. E. Rep. 69.
144. **WILLS**—Widow's Right to Contest.—The right of a widow to contest her husband's will, where he left no children, is not affected by the fact that a widow has no right to make such a contest where her husband was survived by children.—*Freeman v. Freeman*, W. Va., 57 S. E. Rep. 292.
145. **WITNESSES**—Competency.—Acts 1904, p. 1168, ch. 661, disqualifying a party to a cause against an executor as a witness, does not disqualify a mother appearing as next friend of her children in a proceeding to contest the will of her husband.—*Johnson v. Johnson*, Md., 65 Atl. Rep. 919.
146. **WITNESSES**—Credibility.—It is competent for either party to show the interest taken in the case by a material witness for the opposite party; and this may be done on cross-examination of the witness himself.—*Atlantic Coast Line R. Co. v. Powell*, Ga., 56 S. E. Rep. 1006.
147. **WITNESSES**—Credibility.—Where a tenant sued for damage caused by the collapse of a building in course of reconstruction, that he had sued an insurance company claiming the building was destroyed by fire, held not to affect his credibility.—*Blickley v. Luce*, Mich., 111 N. W. Rep. 752.
148. **WITNESSES**—Impeaching Testimony.—A witness cannot be impeached by testimony of another witness as to relations existing between the witness sought to be impeached and a third party.—*City of Greenville v. Spencer*, S. Car., 57 S. E. Rep. 685.
149. **WITNESSES**—Impeachment.—Bad reputation as a basis for impeaching testimony must be limited to reputation as to truth and veracity.—*State v. Grove*, W. Va., 57 S. E. Rep. 296.
150. **WITNESSES**—Privileged Communications.—A statement by a party during cross-examination, without an opportunity to advise with his counsel, that he has no objection to his physician testifying, is not a waiver of his privilege which cannot be withdrawn.—*Ross v. Great Northern Ry. Co.*, Minn., 111 N. W. Rep. 951.